IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9545 of 1995

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASIKLAL SHANKARLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI for Petitioner

MR KL PANDYA for the respondent

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 31/03/2004

ORAL JUDGEMENT

1. The petitioner who is Proprietor of the firm known as M/s R.R. Traders, carrying on business at Bhavnagar, has challenged the order of the State Government (Joint Secretary, Food and Civil Supplies), dated 17.10.1994 which is at Annexure-B to the petition. By the said order the State Government has partly confirmed the order of the District Collector, Bhavnagar dated 5.5.1992 at Annexure-A to the petition.

2. The petitioner is having an agency of Bharat petroleum at Bhavnagar. On 18.6.1991 an Inspector from the Civil Supplies Department has inspected the place of the petitioner and alleged certain irregularities. A show-cause notice was issued on 13.1.1992 to which the petitioner has submitted his reply. Ultimately the respondent no.2 has passed an order dated 5.5.1992 ordering seizure of 369 empty cylinders of cooking gas. Against the said order the petitioner filed an appeal before the respondent no.1, who vide order dated 17.10.1994 partly allowed the appeal and ordered to release 60% of the total seized cylinders. The present petition is filed against the aforesaid order in so far as it is against the petitioner.

3. The main grievance of the petitioner in this petition is that the Government by Notification dated 27th April 1984, has deleted Liquefied Petroleum Gas (LPG) from the List of Schedule to the Essential Commodities Act, 1955 and therefore the proceedings initiated by the Collector and Deputy Secretary are without jurisdiction.

4. Mr. K.L. Pandya for the State Government has contended that this point was not raised before any of the authority before approaching this Court. It is true that this contention was not raised before any of the authority. It is purely a question of law whether the item is covered under the Essential Commodities Act or not. However, in view of the clear position of law as stated above, especially after a lapse of long time, I do not think it proper to remand the matter back to the concerned authority on this short point. Therefore, in the interest of justice and in view of the Government Notification dated 27th April 1984, and also in view of the fact that the cylinders seized are empty cylinders, the impugned orders are required to be quashed and set aside.

5. In the premises aforesaid, the petition succeeds. The impugned order dated 5.5.1992 at Annexure-A and the impugned order dated 17.10.1992 partly dismissing the appeal of the petitioner at Annexure-B are quashed and set aside. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

[K.S. JHAVERI, J.]

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